No. 09-295

IN THE
Supreme Court of the United States

Colvin I. Bert
Petitioner

v.

Comptroller of the Treasury of Maryland
Respondent

On Petition of Writ of Certiorari
To Maryland Court of Appeals

PETITION FOR REHEARING

Colvin I. Bert, Pro Se
Post Office Box 1242
Ellicott City, Maryland 21041
410-312-7866

STATEMENT PURSUANT TO RULE 29.6

See Brief for Petitioner at p. ii.

TABLE OF CONTENTS

STATEMENT PURSUANT TO RULE 29.6 i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

PETITION FOR REHEARING 1

I. Comptroller Routinely Disregards Federal/ State Tax Laws 1

II. MD Tax Compliance Scheme Flawed 6

CONCLUSION 11

CERTIFICATE OF PARTY UNREPRESENTED BY COUNSEL 14

Notice of Income Tax Assessment (Tax) dated October 22, 2009 from Comptroller of MD A1

Notice of Income Tax Assessment (Penalty) dated October 22, 2009 from Comptroller of MD A4

Constitutional and Statutory (Federal/State) Provisions Involved A7

TABLE OF AUTHORITIES

Bank of Columbia v. *Okely*, 4 Wheat. 235—244 [(1819)] 4

Board of Regents v. Roth, 408 U.S. 564, 572 (1972) 11

Buckley v. Valeo, 424 U.S. 1 (1976) 9

Collins v. *Harker Heights*, 503 U.S. 115, 126 (1992) 4

County of Sacramento v. Lewis, 98 F.3d 434 (1998) 3

Daniels v. *Williams*, 474 U.S. 327, 331 (1986) 3, 5

Davidson v. *Cannon*, 474 U.S. 344 (1986) 4

De Jonge v. Oregon, 299 U.S. 353, 362 (1937) 10

DeShaney v. *Winnebago County Dept. of Social Servs.*, 489 U.S. 189, 196 (1989) 4

Fuentes v. *Shevin*, 407 U.S. 407 U.S. 67, 82 (1972) 5

Griswold v. *Connecticut*, 381 U.S. 479 (1965) 5

Hurtado v. *California*, 110 U.S. 516, 527 (1884) 5

Kraft Gen. Foods v. Iowa Dept. of Revenue & Finance, 505 U.S. 71 (1992) 6

Papachristou v. City of Jacksonville, 405 U.S. 156 (1972).....10

Paul v. Davis, 424 U.S. 693 (1976).....10

Rochin v. California, 342 U.S. 165 (1952).....5

Stromberg v. California, 283 U.S. 359, 367-368 (1931).....10

Thornhill v. Alabama, 310 U.S. 88 (1940) 10

United States v. Harriss, 347 U.S. 612, 617 (1954).....10

Washington v. *Glucksberg*, 521 U.S. 702 (1997) 3

Winters v. State, 301 Md. 214, 235 (1984).....9

Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971).....11

Wolff v. *McDonnell*, 418 U.S. 539, 558 (1974) 5

Zinermon v. *Burch*, 494 U.S. 113, 125 (1990).....3

STATUTES AND CONSTITUTIONAL REFERENCES

United States Constitution, Fifth Amendment.....13

United States Constitution, Fourteenth Amendment.....3, 4, 13

Title 42 U.S.C. § 1983.....3

Md. Code Tax-General Article (TG)
TG § 13-520.....8

TG § 13-703.....9

TG § 13-1002.....9

Md. Code State Government Article (SG)
SG § 10-207.....1, 7

SG § 10-213.....2

MD Declaration of Rights, Article VI.....11

PETITION FOR REHEARING

Pursuant to Rule 44.1, petitioner respectfully petitions this Court for rehearing.

I.
Comptroller Routinely Disregards Federal/State Tax Laws

The Comptroller's failure to follow the federal and state tax laws has made the tax compliance scheme in MD unconstitutional. This disregard of the tax laws by the Comptroller of Maryland (Comptroller) promotes an environment of fear and extortion; and if the Court does not intervene the Comptroller will continue to execute his office as if he is the King of England and above the law in every respect.

The Comptroller routinely and systematically fails to give persons proper notice, denies persons a hearing to dispute tax collector evidence, denies persons a formal hearing required by law, and denies persons a proper de novo hearing in Tax Court.

The Comptroller 'appears' to provide persons proper notice and a hearing with the opportunity to be heard. However, a closer analysis will clearly show that the notices issued by the Comptroller fail to meet the requirements of MD State Government Article (SG) § 10-207; and the hearing provided by the Comptroller is not a proceeding where the Comptroller places evidence on the record to use in

adjucating the contested case pursuant to MD SG §10-213 (a)[1].

Instead, the Comptroller's tax compliance scheme is designed to hinder and limit contested tax cases; and the common person would find it difficult to navigate this erroneous, bias and deceptive administrative appeal process.

State income tax collection is big business and any person threatening this enterprise is treated like a terrorist and labeled a protestor. However, the petitioner is neither a terrorist nor a protestor. The petitioner is actually a tax law proponent. The petitioner files returns based on the tax laws and demands the Comptroller dispute any tax return filed by the petitioner pursuant to the law.

In contrast the Comptroller's tax compliance scheme demands that persons do what the Comptroller says and not what the federal and state tax laws require. Subsequently, when a person does not do what the Comptroller wants that person is subjected to unfair and bias appeal hearings and illegal levy and garnishment action without due process. Even MD lawyers and judges are afraid of the tax collector.

The petitioner in the case before the Court has been subjected to bank levy, wage garnishment, dismissal of appeals and unfair, bias proceedings at the administrative and judicial levels. These actions

---

[1] SG §10-213. Evidence. (a) *In general.* - (1) Each party in a contested case shall offer all of the evidence that the party wishes to have made part of the record. (2) If the agency has any evidence that the agency wishes to use in adjudicating the contested case, the agency shall make the evidence part of the record.

have been taken against the petitioner by the Comptroller because the petitioner demands that the Comptroller follow the tax laws.

It is unconstitutional for the Comptroller to demand persons file a Maryland state tax return under the penalty of perjury; but refuse to consider the person's filed tax return when determining the person's tax liability. This is a blatant denial of a person's due process rights.

If failing to file a tax return is a criminal act punishable by prison time; then a person filing a valid tax return should be provided equal rights under the law. Therefore, the accusation of a false return is a serious offense and the administrative and judicial process necessary to prove such an offense should not be ignored and treated lightly by government employees.

The Court stated in *County of Sacramento v. Lewis,* 98 F.3d 434 (1998), reversed, that:

> Our prior cases have held the provision that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law," U.S. Const., Amdt. 14, §1, to "guarante[e] more than fair process," *Washington* v. *Glucksberg,* 521 U.S. ___, ___ (1997) (slip op., at 15), and to cover a substantive sphere as well, "barring certain government actions regardless of the fairness of the procedures used to implement them," *Daniels* v. *Williams,* 474 U.S. 327, 331 (1986); see also *Zinermon* v. *Burch,* 494 U.S. 113, 125 (1990) (noting that substantive due process violations are actionable under §1983). The

allegation here that Lewis was deprived of his right to life in violation of substantive due process amounts to a such claim, that under the circumstances described earlier, Smith's actions in causing Lewis's death were an abuse of executive power so clearly unjustified by any legitimate objective of law enforcement as to be barred by the Fourteenth Amendment. Cf. *Collins* v. *Harker Heights,* 503 U.S. 115, 126 (1992) (noting that the Due Process Clause was intended to prevent government officials " 'from abusing [their] power, or employing it as an instrument of oppression' ") (quoting *DeShaney* v. *Winnebago County Dept. of Social Servs.,* 489 U.S. 189, 196 (1989) (quoting *Davidson* v. *Cannon,* 474 U.S. 344 (1986)).

Since the time of our early explanations of due process, we have understood the core of the concept to be protection against arbitrary action:

"The principal and true meaning of the phrase has never been more tersely or accurately stated than by Mr. Justice Johnson, in *Bank of Columbia* v. *Okely,* 4 Wheat. 235—244 [(1819)]: 'As to the words from Magna Charta, incorporated into the Constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at last settled down to this: that they were intended to secure the individual from the arbitrary exercise of the

powers of government, unrestrained by the established principles of private right and distributive justice.' " *Hurtado* v. *California,* 110 U.S. 516, 527 (1884).

We have emphasized time and again that "[t]he touchstone of due process is protection of the individual against arbitrary action of government," *Wolff* v. *McDonnell,* 418 U.S. 539, 558 (1974), whether the fault lies in a denial of fundamental procedural fairness, see, *e.g.*, *Fuentes* v. *Shevin,* 407 U.S. 407 U.S. 67, 82 (1972) (the procedural due process guarantee protects against "arbitrary takings"), or in the exercise of power without any reasonable justification in the service of a legitimate governmental objective, see, *e.g.*, *Daniels* v. *Williams*, 474 U.S., at 331 (the substantive due process guarantee protects against government power arbitrarily and oppressively exercised). While due process protection in the substantive sense limits what the government may do in both its legislative, see, *e.g.*, *Griswold* v. *Connecticut,* 381 U.S. 479 (1965), and its executive capacities, see, *e.g.*, *Rochin* v. *California,* 342 U.S. 165 (1952), criteria to identify what is fatally arbitrary differ depending on whether it is legislation or a specific act of a governmental officer that is at issue.

In the instant case it is the arbitrary, unlawful and oppressive actions of the Comptroller that are at issue and the Court's review of this

matter is needed because the Comptroller is terrorizing Maryland citizens and businesses.

II
MD Tax Compliance Scheme Flawed

Whether it is intentionally, erroneously or by design the MD States Attorney, the MD Tax Court and the MD justice system supports the Comptroller's tax compliance scheme. Therefore, any erroneous or fraudulent actions by the Comptroller are often ignored by the States Attorney and the courts.

Subsequently, a person who contest a tax liability determined by the Comptroller and appeals the decision to the MD Tax Court will find themselves at odds with four branches of government; the Comptroller's Office, States Attorney's Office, MD Tax Court and the judicial branch of government.

Sadly, any appeals that reach the Tax Court or beyond will often result in legal fees (if an attorney is retained) that far exceed the contested tax. Hence, it is financially better to just pay the contested tax versus fighting the tax assessment in court. This is denial of due process by excessive costs and burden.

This Court stated in *Kraft Gen. Foods v. Iowa Dept. of Revenue & Finance*, 505 U.S. 71 (1992):

> The burden on one making a facial challenge to the constitutionality of a statute is heavy; the litigant must show that "no set of circumstances exists under which the Act would be valid."

This is the case when the Comptroller fails to provide a person proper notice or utilizes the frivolous return penalty to assess persons additional taxes. In both cases, the Comptroller fails to provide the person due process. On the one hand the Comptroller fails to identify the issue that has resulted in the tax liability increase and on the other hand the Comptroller disregards the person's best evidence to substantiate their tax liability, which is their tax return.

In the instant case the Comptroller cited statutes that he did not correctly apply. However, the Comptroller now fails to identify any statutes of authority and action required by law. Recent assessments received by petitioner dated October 22, 2009 (A1 – A6.) are perfect examples of notices issued by the Comptroller that failed to meet the requirements of SG § 10-207.

The Court should note that neither Notice of Income Tax Assessment (A1 – A6) issued by the Comptroller stated concisely and simply the facts that are asserted; or if the facts cannot be stated in detail – the issues that are involved. The notices failed to state the pertinent statutory and regulatory sections under which the agency is taking its action and does not state the sanction proposed or the specific legal penalty, if any, as a result of the agency's action.

Therefore, it is impossible for a person to know what the facts and issues are that have resulted in a change to their tax liability if the Comptroller does not provide that information in the Notice of Income Tax Assessment. Subsequently, as

in the instant case, the petitioner is being pressured to appeal a decision that is vague, not specific or informative (i.e., what is the exact penalty).

Subsequently, when a person appeals a Notice of Income Tax Assessment and attends the scheduled hearing the Comptroller employee responsible for the assessment fails to present any evidence to substantiate their assessment. In addition, the person appealing the assessment is denied the opportunity to dispute the basis of the assessment. Instead, the petitioner is forced to substantiate the entries on their tax return in the blind (i.e., without the knowledge of what is legally wrong with his return according to the Comptroller).

The Comptroller's hearing officer issues a written final determination at the conclusion of the hearing and the petitioner can appeal this decision with the MD Tax Court. However, the Comptroller routinely fails to provide a record of the proceeding from which an appeal is taken pursuant to TG § 13-520, which states:

> **TG § 13-520. Subpoenas for hearings.**
>
> (a) *On filing of petition.* – On receipt of a petition, the clerk of the Tax Court immediately shall issue a subpoena that requires the appropriate tax determining agency to produce at a hearing before the Tax Court:
>
> (1) The record of the proceeding from which the appeal is taken or a certified copy of the record; and
>
> (2) Any map, plat, or other document that is connected with the record.

Hence, instead of the de novo hearing conducted at Tax Court being a fresh look at the record from the preceeding hearing and the final determination issued by the Comptroller's hearing officer, the Tax Court hearing is erroneously conducted as a totally new proceeding with no previous record and the petitioner is denied any opportunity to dispute the final determination issued by the Comptroller's hearing officer. This is a blatant denial of due process.

Subsequently, the Tax Court issues an order that does not specify the findings of fact or the conclusions of law determined at the Tax Court hearing as required by law; another denial of due process.

Unbelievably, the Circuit Court also fails to issue an order specifying the findings of fact or the conclusions of law determined at the Circuit Court hearing.

Finally, the CSA and the Comptroller invoke the criminal offense statute TG § 13-1002 when they claim petitioner filed a false form 4852 or allege the same circumstances as *Winters v. State,* wherein Winters was indicted on criminal tax offenses. However, as the Court knows, petitioner has never been charged with a criminal tax violation or the civil penalty of filing a false return (TG § 13-703).

The Court in *Buckley v. Valeo,* 424 U.S. 1 (1976) stated:

> Due process requires that a criminal statute provide adequate notice to a person of ordinary intelligence that his contemplated conduct is illegal, for "no man shall be held criminally responsible for conduct which he

could not reasonably understand to be proscribed." *United States v. Harriss,* 347 U.S. 612, 617 (1954). *See also Papachristou v. City of Jacksonville,* 405 U.S. 156 (1972).

The petitioner has never received from the Comptroller in the instant case a notice that charges him with a criminal tax violation. This is another denial of due process.

The Court in *Thornhill v. Alabama,* 310 U.S. 88 (1940) stated:

> "Conviction upon a charge not made would be sheer denial of due process." *De Jonge v. Oregon,* 299 U.S. 353, 362 < The practice of substituting for the evidence a stipulation of facts not shown to have received the approval of the court below is disapproved. P. 358>; *Stromberg v. California,* 283 U.S. 359, 367-368.

The Md Court of Special Appeals did exactly what the Court in *Thornhill warned* of when it determined that petitioner "filed a false form 4852 that allowed him to make the claim to State and Federal tax collectors that his adjusted income for 2003 was zero." No court below had approved the stipulation of that alleged fact.

In addition, the Court in *Paul v. Davis,* 424 U.S. 693 (1976) stated:

> The Due Process Clause also forbids arbitrary deprivations of liberty. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," the minimal requirements of the Clause must be satisfied.

Wisconsin v. Constantineau, 400 U.S. 433, 437 (1971); *Board of Regents v. Roth, supra* at 573. School authorities here suspended appellees from school for periods of up to 10 days based on charges of misconduct. If sustained and recorded, those charges could seriously damage the students' standing with their fellow pupils and their teachers, as well as interfere with later opportunities for higher education and employment. It is apparent that the claimed right of the State to determine unilaterally and without process whether that misconduct has occurred immediately collides with the requirements of the Constitution.

Obviously, an unsubstantiated claim of fraud by the CSA could seriously damage the petitioner's reputation, opportunities for employment and many other personal life goals.

CONCLUSION

The Maryland Declaration of Rights, Article VI, states:

> That all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct: Wherefore, whenever the ends of Government are perverted, and public liberty manifestly

> endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old, or establish a new Government; the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish and destructive of the good and happiness of mankind.

The Comptroller's actions in the instant case are erroneous and unconstitutional, and public liberty is manifestlty endangered by the taking of property without due process.

Therefore, the petitioner believes it his public duty to fight unconstitutional actions by the Comptroller through, initially, the judicial process, and if necessary by informing the citizens of Maryland about the egregious acts of the Comptroller. In addition, the Comptroller should be removed from office if he repeatedly fails to follow the federal and state tax laws.

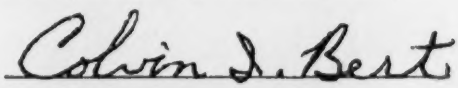
The petitioner has attained a B.S. in Electrical Engineering from Drexel University; has been certified as a Certified Quality Auditor and a Certified Software Quality Engineer by the American Society for Quality; and has been a technical government auditor at NASA and the Centers for Medicare and Medicaid Services (CMS) for over 20 years. Therefore, the petitioner is intelligent enough to understand the administrative procedures for contested cases and the applicable laws and statutes at issue. Hence, the petitioner has successfully filed twenty (20) appeals of Comptroller actions in the last four years.

In addition, the petitioner is currently appealling two other questionable actions by the Comptroller; and if the Court does not act those cases will also be before the Court.

Finally, the petitioner ask the Court to determine why does the Comptroller and the MD justice system routinely and intentionally circumvent and misapply the tax statutes of both the U.S. and the state of MD in tax cases by denying state citizens their constituional Fifth and Fourteenth Amendment rights and their due process procedural rights set forth in the statutes themselves?

For the forgoing reasons, petitioner respectfully requests the Court to grant his petition for rehearing.

Respectfully Submitted,

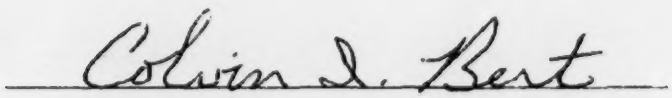


Colvin I. Bert, Pro Se
P.O. Box 1242
Ellicott City, MD 21041
410-312-7866

November 9, 2009

CERTIFICATE OF PARTY UNREPRESENTED BY COUNSEL

I hereby certify that this petition for rehearing is restricted to the grounds specified in paragraph 2 of Rule 44 and it is presented in good faith and not for delay.



Colvin I. Bert

COMPTROLLER NOTICE ID: N0000201/07/138
***of* Maryland**
Serving the People

NOTICE OF INCOME TAX ASSESSMENT

Colvin I. Bert October 22, 2009
P.O. Box 1242
Ellicott City, MD 21041 Notice No .1438242091022

This is your Notice of Income Tax Assessment required by law. This notice reflects the penalty and accrued interest to date and is required even if a payment plan has been established. If a plan is in effect, continue to follow the terms of the agreement. If you disagree with this assessment, you may, within 30 days from the date of this notice, register an appeal online with the **Compliance Division** at **http://compnet.comp.state.md.us** or in writing to the Compliance Division, Hearings and Appeals section, 301 West Preston Street, Room 315, Baltimore, Maryland 21201 or by e-mail to cdhearings@comp.state.md.us.

ACCOUNT YEAR .... 2005 INTEREST ..$3,008.66
TAX LIABILITY $6,452.80 PENALTY $645.28
BALANCE DUE $10,106.74

Unless full payment or a request for a hearing is received within thirty days, we will begin collection actions. Please use the coupon below when remitting your payment. To pay by credit card, contact Official Payments Corp. at 1-800-2PAYTAX or on their

website at www.officialpayments.com. **If you need additional time to pay,** you may be eligible for an extended payment plan up to 24 months by visiting the **Compliance Division** website at https://interactive.marylandtaxes.com/extranet/compliance/payagr/ where, for your convenience, your monthly payments can be deducted directly from your checking account. For a payment plan than is 12 months or less, visit our website or send as much as possible now, circle one the options below and **return this entire notice with your payment. Interest accrues at 13% per annum during the payment period.** If you need assisstance please call 410-974-2432 or 1-888-674-0016.

I request a payment plan for: 3 Months 6 Months 9 Months 12 Months Amount enclosed: _____

Phone Numbers: Daytime_____ Evening_____

The Maryland Legislature has approved a Tax Amnesty program starting September 1st and ending October 30th.

To see if you are eligible for Amnesty check the internet at www.marylandtaxes.com.

FOR THE HEARING IMPAIRED: Maryland Relay Service 711 or TDD 410-260-7157

Please tear at performation and return this portion with your payment or letter so it can be identified properly. Make checks payable to COMPTROLLER OF MARYLAND. DO NOT SEND CASH. Please write your identification number (SSN, CR or FEIN)

on your check. Be sure the return address shows through the window on the enclosed envelope. Make any name or address changes below.

State of Maryland
Comptroller of Maryland

1438242091022 10 106 74 Notice No 1438242091022
[_____] [_____] Personal Income Tax
NOTICE NO. BALANCE
DUE

COLVIN I BERT
PO BOX 1242
ELLICOTT CITY MD
21041-1242

COMPTROLLER OF MARYLAND
REVENUE ADMINISTRATION DIVISION
ANNAPOLIS, MD 21411

10/22/2009

COMPTROLLER NOTICE ID: N0000201/07/138
of Maryland
Serving the People

NOTICE OF INCOME TAX ASSESSMENT

Colvin I. Bert October 22, 2009
P.O. Box 1242
Ellicott City, MD 21041 Notice No .1438241091022

This is your Notice of Income Tax Assessment required by law. This notice reflects the penalty and accrued interest to date and is required even if a payment plan has been established. If a plan is in effect, continue to follow the terms of the agreement. If you disagree with this assessment, you may, within 30 days from the date of this notice, register an appeal online with the **Compliance Division** at **http://compnet.comp.state.md.us** or in writing to the Compliance Division, Hearings and Appeals section, 301 West Preston Street, Room 315, Baltimore, Maryland 21201 or by e-mail to cdhearings@comp.state.md.us.

ACCOUNT YEAR .... 2005 INTEREST .....$.00
TAX LIABILITY ..... $.00 PENALTY $500.00
BALANCE DUE ...$500.00

Unless full payment or a request for a hearing is received within thirty days, we will begin collection actions. Please use the coupon below when remitting your payment. To pay by credit card, contact Official Payments Corp. at 1-800-2PAYTAX or on their

website at www.officialpayments.com. **If you need additional time to pay,** you may be eligible for an extended payment plan up to 24 months by visiting the **Compliance Division** website at https://interactive.marylandtaxes.com/extranet/compliance/payagr/ where, for your convenience, your monthly payments can be deducted directly from your checking account. For a payment plan than is 12 months or less, visit our website or send as much as possible now, circle one the options below and **return this entire notice with your payment. Interest accrues at 13% per annum during the payment period.** If you need assisstance please call 410-974-2432 or 1-888-674-0016.

I request a payment plan for: 3 Months 6 Months 9 Months 12 Months Amount enclosed: _____

Phone Numbers: Daytime_____ Evening_____

The Maryland Legislature has approved a Tax Amnesty program starting September 1st and ending October 30th.

To see if you are eligible for Amnesty check the internet at www.marylandtaxes.com.

FOR THE HEARING IMPAIRED: Maryland Relay Service 711 or TDD 410-260-7157

Please tear at performation and return this portion with your payment or letter so it can be identified properly. Make checks payable to COMPTROLLER OF MARYLAND. DO NOT SEND CASH. Please write your identification number (SSN, CR or FEIN)

on your check. Be sure the return address shows through the window on the enclosed envelope. Make any name or address changes below.

State of Maryland
Comptroller of Maryland

1438241091022 500 00 Notice No 1438241091022
[_____] [_____] Personal Income Tax
NOTICE NO. BALANCE
DUE

COLVIN I BERT
PO BOX 1242
ELLICOTT CITY MD
21041-1242

COMPTROLLER OF MARYLAND
REVENUE ADMINISTRATION DIVISION
ANNAPOLIS, MD 21411

10/22/2009

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION FIFTH AMENDMENT.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 42 U.S.C. § 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or ommision taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

MD. CODE STATE GOVERNMENT ARTICLE (SG) § 10-207. Notice of agency action.

(a) *In general.* - An agency shall give reasonable notice of the agency's action.

(b) *Contents of notice.* - The notice shall

(1) state concisely and simply:

(i) the facts that are asserted; or

(ii) if the facts cannot be stated in detail when the notice is given, the issues that are involved;

(2) state the pertinent statutory and regulatory sections under which the agency is taking its action;

(3) state the sanction proposed or the potential penalty, if any, as a result of the agency's action;

(4) unless a hearing is automatically scheduled, state that the recipient of notice of an agency's action may have an opportunity to request a hearing, including:

(i) what, if anything, a person must do to receive a hearing; and

(ii) all relevant time requirements; and

(5) state the direct consequences, sanction, potential penalty, if any, or remedy of the recipient's failure to exercise in a timely manner the opportunity for a hearing or to appear for a scheduled hearing.

(c) *Consolidation of notices.* - The notice of agency action under this section may be consolidated with the notice of hearing required under § 10-208 of this subtitle.

(d) *Publication in Register.* - For purposes of this section, publication in the Maryland Register does not constitute reasonable notice to a party.

[An. Code 1957, art. 41, § 251; 1984, ch. 284, § 1; 1989, ch. 239; 1993, ch. 59, § 1.]

SG §10-208. Notice of Hearing.

(a) *In general.* – An agency or the Office shall give all parties in a contested case reasonable written notice of the hearing.

(b) *Contents of notice.* - The notice shall state:

(1) the date, time, place, and nature of the hearing;

(2) the right to call witnesses and submit documents or other evidence under § 10-213(f) of this subtitle;
(3) any applicable right to request subpoenas for witnesses and evidence and specify the costs, if any, associated with such a request;
(4) that a copy of the hearing procedure is available on request and specify the costs associated with such a request;
(5) any right or restriction pertaining to representation;
(6) that failure to appear for the scheduled hearing may result in an adverse action against the party; and
(7) that, unless otherwise prohibited by law, the parties may agree to the evidence and waive their right to appear at the hearing.

(c) *Consolidation of notices.* – The notice of hearing may be consolidated with the notice of agency action required under § 10-207 of this subtitle.

(d) *Publication in Register.* – For purposes of this subtitle, publication in the Maryland Register does not constitute reasonable notice to a party.

MD. CODE TAX-GENERAL ARTICLE (TG) §13-703. False Returns.

If, with the intent to evade the payment of tax, a person, including an officer of a corporation, or a governmental unit makes a false tax return, the tax collector shall assess a penalty not exceeding 100% of the underpayment of tax.

TG § 13-705. Frivolous income tax return.

(a) *Penalty.* – The Comptroller shall assess a penalty not exceeding $500 if: (1) an individual, as defined under § 10-101 of this article, files what purports to be an income tax return, but which:

(i) does not contain information on which the substantial correctness of the tax may be determined; or

(ii) contains information that, on its face, indicates the tax reported on the return is substantially incorrect; and

(2) the conduct of the individual is due to:

(i) a desire, apparent on the face of the return, to delay or impede the administration of the provisions of Title 10; or

(ii) a position that is frivolous because the position:

1. has no basis in law or fact;
2. is patently unlawful; and
3. does not involve a legitimate dispute or reflect an inadvertent mathematical or clerical error.

(b) *Additional to other penalty.* — The penalty under subsection (a) of this section is in addition to any penalty assessed under § 13-701 of this subtitle.

TG § 13-1002. Willfully filing false return.

(a) *Alcoholic beverage tax.*- A person who willfully files a false alcoholic beverage tax return is guilty of perjury and, on conviction, is subject to the penalty of perjury.

(b) *Financial institution franchise or income tax.*- A person, including an officer of a corporation, who willfully files a false financial institution franchise tax return, a false public service company franchise tax return, or a false income tax return with the intent to evade the payment of tax due under this article is guilty of perjury and, on conviction, is subject to the penalty for perjury.

(c) *Applicability.*- Subsections (a) and (b) of this section apply to the alcoholic beverage, financial institution franchise, public service company franchise, and income taxes.